

REMARKS/ARGUMENTS

Claims 1-18 and 20-21 are pending in the application. Claim 19 has been cancelled. In the office action, claims 12, 14-17 were initially rejected under 35 U.S.C. §102(e) as being anticipated by Brown (U.S. Pat. 6,058,480). Claims 1-11, 18, 20 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over the new combination of Brown (U.S. Pat. 6,058,480) in view of Dice (U.S. Pat. 6,289,451). Claim 13 was objected to as being dependent upon a rejected base claim. The cited references have been reviewed and are addressed below. The examiner's detailed office action is duly noted and appreciated for its detail.

Claim 13 Issues

Claim 13 was noted as being allowable. The examiner noted that neither the Brown reference nor the prior art teaches the aspect of generating a wakeup message at the server and conveying the message with a nonce to the client. However, claim 13 was objected to as being dependent upon a rejected base claim. It is believed this objection was an oversight. As can be seen, claim 13 is an independent claim and therefore should be in condition for allowance. Claim 13 has been amended in this response to correct a punctuation error -- which is merely intended to correct a typographical error and does not narrow the claimed invention.

It is also noted that claim 13 was included in the rejection of claims 12, and 14-17. It is believed that this is an oversight, in view of the examiner's comment later in the office action that Brown does not teach generating a wakeup message at the server and conveying the message with a nonce to the client.

Claims 1-11, 18, 20, and 21 Issues

Claims 1-11, 18, 20, and 21 were initially rejected as being unpatentable over Brown in view of Dice (6,289,451). The office action cited Dice at column 11, lines 1-13 as teaching "coupling a nonce with a message." The applicant notes that this cited portion of Dice is not reciting a nonce as used in the applicant's application. Namely, at page 3, lines 29-31 it is noted that a nonce is a number that can be generated only once so as to prevent a replay attack.

The portion of Dice cited in the office action states:

"In addition, it will be appreciated that the communication devices 11(n) can implement several methodologies during a communication session. That is, the communication devices can, for some of the message packets to be transferred, encrypt the entire message packet, or just the information packet portion or the hash value portion. In addition, for such message packets for which the hash value is encrypted, the hash value may be generated from just the information packet portion, or from the information packet concatenated with the session key value SK. The encryption of at least the information packet portion of a message packet may be particularly desirable if the information contained therein is to be maintained in private."

Dice, column 11, lines 1-13.

As can be seen from reviewing this portion of Dice, Dice does not teach a random number which is utilized only once for purposes of preventing a replay attack being coupled with a message. Rather, Dice is referencing a session key -- which is utilized for encryption, as opposed to preventing a replay attack. Furthermore, the other portions of the specification do not indicate that the session key is limited to being generated only once. Thus, it is believed that Dice in combination with Brown does not make claims 1-11, 18, 20, and 21 unpatentable.

Claims 12, 14-17 Issues

Claims 12, 14-17 were initially rejected under 35 USC §102(e) in view of Brown. In the earlier response filed by the applicant, it was noted that the Brown reference does not teach a cable telephony adapter. The most recent office action responded to this argument by asserting that Brown teaches a cable telephony adapter because Brown includes a telephone

network. Thus, this appears to be an inherency argument that the examiner believes it is inherent that the Brown reference necessarily without a doubt includes a cable telephony adapter.

The applicant respectfully maintains its position that Brown does not teach a cable telephony adapter. While the Brown reference may include a telephone network, Brown is not directed at implementing telephony operations. A word search of Brown for the phrase "tele" showed that these letters only occur twice, namely at column 1, line 58 and at column 6, line 56. In these sections, the telephone network is not discussed in terms of its use to conduct a telephony session. Rather, it is merely mentioned as a type of network -- in conjunction with a LAN, a satellite, or a fiber optic link -- across which communications can take place. Furthermore, the type of communications mentioned in detail, for example, are HTTP protocol communications (see Abstract, line 17).

The assertion by the office action that Brown necessarily teaches a cable telephony adapter is respectfully traversed given the narrow applicability of the law of inherency. The MPEP makes clear by citing case law from the Federal Circuit that:

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" Citing In re Robertson, 169 F.3d 743, 745 (Fed. Cir. 1999).

See MPEP Eighth Edition, August 2001, Latest Revision February 2003, section 2212, at page 2100-52, column 2, lines 6-15.

In view of this high standard, it is believed that Brown fails to anticipate claims 12, and 14-17, since it does not necessarily require the use of a cable telephony adapter.

Appl. No. 09/668,426
Amdt. dated August 12, 2004
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group

PATENT



CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. Therefore, allowance of the claims is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

William F. Vobach

William F. Vobach
Reg. No. 39,411

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
Attachments
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